

**Assembly Concurrent Resolution**

**No. 145**

**Introduced by Assembly Member Olsen**  
(Principal coauthor: Senator Cannella)

February 29, 2016

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Assembly Concurrent Resolution No. 145—Relative to presidential primary elections.

LEGISLATIVE COUNSEL’S DIGEST

ACR 145, as introduced, Olsen. Presidential primary elections: advisory ballots.

Existing provisions of the California Constitution require the Legislature to provide for primary elections for partisan offices, including an open presidential primary election whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy. Existing statutory provisions proscribe the procedures for specified political parties to select delegates to the party’s national convention, at which the party chooses its candidate for the office of President of the United States.

For a partisan primary election, existing law requires one form of ballot to be provided for each qualified political party and one form of nonpartisan ballot to be provided, as specified. Existing law requires a voter who is not registered as disclosing a preference for any one of the political parties participating in the election to be furnished with a nonpartisan ballot, unless he or she requests a ballot of a political party

and that party authorizes a person who has declined to disclose a party preference to vote the ballot of the party, as specified.

This measure would urge the Secretary of State to exercise his or her authority to establish a new advisory voting process that would allow specified voters to cast an advisory ballot in the presidential primary election, as specified. This measure would encourage each political party that participates in the presidential primary election to consider the results of the advisory ballots in selecting the party's nominee for the office of President of the United States.

Fiscal committee: yes.

1 WHEREAS, California has made it a responsibility of the state  
2 to promote the exercise of the right to vote by, among other things,  
3 encouraging voter registration; and

4 WHEREAS, The California Secretary of State has the authority  
5 to adopt regulations to assure the uniform application and  
6 administration of state election law; and

7 WHEREAS, Subdivision (a) of Section 5 of Article II of the  
8 California Constitution requires a voter-nominated primary election  
9 to be conducted to select the candidates for congressional and state  
10 elective offices in California, at which all voters, regardless of  
11 their political party preference, may vote for any candidate; and

12 WHEREAS, Voters in California have become accustomed to  
13 voter-nominated primary elections, and therefore, voters are likely  
14 to be confused if they cannot vote for the candidate of their choice,  
15 without regard to political party preference; and

16 WHEREAS, In 2012, many voters throughout the state were  
17 confused with respect to their right to vote in the presidential  
18 primary election due to its semi-closed partisan nature; and

19 WHEREAS, Pursuant to subdivision (c) of Section 5 of Article  
20 II of the California Constitution, the Legislature is required to  
21 provide for an open presidential primary election, as specified;  
22 and

23 WHEREAS, The Legislature has provided for a semi-closed  
24 primary election system, as reflected in Section 13102 of the  
25 Elections Code, under which a voter who is not registered as  
26 disclosing a preference with any one of the political parties  
27 participating in the election may vote a ballot of a political party  
28 only if the party, by party rule duly noticed to the Secretary of  
29 State, permits a person to do so; and

1 WHEREAS, An open primary election is generally one in which  
2 a voter may participate, unconditioned by his or her party  
3 preference or lack thereof, and not subject to conditions governed  
4 outside of the exclusive authority and control of the state; and

5 WHEREAS, Under the First Amendment to the United States  
6 Constitution, as recognized by the United States Supreme Court  
7 in *California Democratic Party v. Jones* (2000) 530 U.S. 567, a  
8 state may not require a political party to allow a non-party member  
9 to participate in the party's nomination proceedings without the  
10 party's consent; and

11 WHEREAS, Pursuant to Section 3 of Article XVI of the  
12 California Constitution, no money shall ever be appropriated or  
13 drawn from the State Treasury for the purpose or benefit of any  
14 corporation or institution not under the exclusive management and  
15 control of the State of California; and

16 WHEREAS, A presidential primary election is publicly funded  
17 in accordance with Section 13001 of the Elections Code; and

18 WHEREAS, Section 2 of Article II of the California Constitution  
19 specifies that citizenship, age, and residency are the requirements  
20 for a person to vote; and

21 WHEREAS, The United States Supreme Court has recognized  
22 that primary elections are an integral stage of the election process;  
23 and

24 WHEREAS, A partisan presidential primary election may be  
25 conducted so as to protect the rights of political parties, while at  
26 the same time protecting the rights of all voters to participate; and,  
27 therefore, be it

28 *Resolved by the Assembly of the State of California, the Senate*  
29 *thereof concurring*, That the Legislature urges the Secretary of  
30 State to exercise his or her authority to establish a new advisory  
31 voting process that would allow certain voters to cast an advisory  
32 ballot in the presidential primary election; and be it further

33 *Resolved*, That the Legislature urges the Secretary of State to  
34 prepare an advisory ballot for the presidential primary election  
35 that would allow a voter who did not request or vote a ballot of a  
36 political party in that election to submit an advisory vote for a  
37 candidate for the office of President of the United States; and be  
38 it further

39 *Resolved*, That the Legislature urges the Secretary of State to  
40 list on the advisory ballot each qualified candidate for the office

1 of President of the United States, regardless of the candidate's  
2 political party preference; and be it further

3 *Resolved*, That the Legislature urges the Secretary of State to  
4 provide for the distribution of the advisory ballot to all voters who  
5 did not request or vote a ballot of a political party in that election;  
6 and be it further

7 *Resolved*, That the Legislature urges the Secretary of State to  
8 provide for the canvassing of the advisory ballots in the same  
9 manner, and at the same time and place, as the results of the  
10 presidential primary elections ballots for the political parties are  
11 canvassed; and be it further

12 *Resolved*, That the Legislature encourages each political party  
13 that participates in the presidential primary election to, but does  
14 not requires the party to, consider the results of the advisory ballots  
15 in selecting the party's nominee for the office of President of the  
16 United States; and be it further

17 *Resolved*, That the Chief Clerk of the Assembly transmit copies  
18 of this resolution to the author for appropriate distribution.